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Arizona Corporation Commission

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OCT 31 2013

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IN THE MATTER OF THE APPLICATION OF
VALENCIA WATER COMPANY—TOWN
DIVISION FOR THE ESTABLISHMENT OF
JUST AND REASONABLE RATES AND
CHARGES FOR UTILITY SERVICE
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF
ITS PROPERTY THROUGHOUT THE STATE
OF ARIZONA.

DOCKET NO. W-01212A-12-0309

IN THE MATTER OF THE APPLICATION OF
GLOBAL WATER-PALO VERDE UTILITIES
COMPANY FOR THE ESTABLISHMENT OF
JUST AND REASONABLE RATES AND
CHARGES FOR UTILITY SERVICE
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF
ITS PROPERTY THROUGHOUT THE STATE
OF ARIZONA.

DOCKET NO. SW-20445A-12-0310

IN THE MATTER OF THE APPLICATION OF
WATER UTILITY OF NORTHERN
SCOTTSDALE FOR APPROVAL OF A RATE
INCREASE.

DOCKET NO. W-03720A-12-0311

IN THE MATTER OF APPLICATION OF
WATER UTILITY OF GREATER TONOPAH
FOR THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES FOR
UTILITY SERVICE DESIGNED TO REALIZE
A REASONABLE RATE OF RETURN ON THE
FAIR VALUE OF ITS PROPERTY
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. W-02450A-12-0312

1 IN THE MATTER OF THE APPLICATION OF
2 VALENCIA WATER COMPANY—GREATER
3 BUCKEYE DIVISION FOR THE
4 ESTABLISHMENT OF JUST AND
5 REASONABLE RATES AND CHARGES FOR
6 UTILITY SERVICE DESIGNED TO REALIZE
A REASONABLE RATE OF RETURN ON THE
FAIR VALUE OF ITS PROPERTY
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. W-02451A-12-0313

7 IN THE MATTER OF THE APPLICATION OF
8 GLOBAL WATER—SANTA CRUZ WATER
9 COMPANY FOR THE ESTABLISHMENT OF
10 JUST AND REASONABLE RATES AND
11 CHARGES FOR UTILITY SERVICE
12 DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE OF
ITS PROPERTY THROUGHOUT THE STATE
OF ARIZONA.

DOCKET NO. W-20446A-12-0314

13 IN THE MATTER OF THE APPLICATION OF
14 WILLOW VALLEY WATER COMPANY FOR
15 THE ESTABLISHMENT OF JUST AND
16 REASONABLE RATES AND CHARGES FOR
17 UTILITY SERVICE DESIGNED TO REALIZE
A REASONABLE RATE OF RETURN ON THE
FAIR VALUE OF ITS PROPERTY
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. W-01732A-12-0315

18
19 **REPLY BRIEF**

20
21 **ON BEHALF OF**
22 **SIERRA NEGRA RANCH, LLC AND SIERRA NEGRA MANAGEMENT, LLC**
23 **OCTOBER 31, 2013**
24
25
26

1 Sierra Negra Ranch ("SNR"), by and through undersigned counsel, hereby files its Reply
2 Brief in the above captioned matter. SNR hereby supplements its Initial Closing Brief filed on
3 October 18, 2013 and addresses issues raised by Staff of the Arizona Corporation Commission
4 and Global Water Resources, L.L.C. ("GWR") in their initial closing briefs.

5 **I. OVERVIEW OF REQUESTS BY SNR**

6 As set forth more fully in its Initial Closing Brief, SNR requests that the Commission:

7 1. Take jurisdiction over GWR and the Infrastructure, Coordination, Finance and
8 Option Agreements ("ICFAs") to ensure that all investments made by developers under these
9 ICFAs are committed to construct the contracted-for regional infrastructures in order to not only
10 protect those developers but also the ratepayers for whom that infrastructure is to be built.

11 2. To determine that the ICFAs and HUF as written will not continue to put SNR and
12 other developers that have signed ICFAs at a competitive disadvantage with developers that have
13 not signed ICFAs, thereby jeopardizing development in those areas where developers that have
14 signed ICFAs intend to build.

15 3. Order GWR to modify the ICFAs to incorporate the provisions ultimately
16 approved by the Commission in the Settlement Agreement related to the establishment of HUF in
17 order to resolve inconsistencies between the ICFA and the HUF related to payment of such funds
18 that may lead to litigation in the future.

19 4. Review in detail and regulate the financial condition of GWR so that it will be
20 capable of fulfilling all of its obligations to the present and future ratepayers under all ICFAs.
21 (SNR-1 at 5-6).

22 More specifically, SNR requests that the Commission, as a condition for approving the
23 Settlement Agreement:

- 24 • Either regulate the transactions of GWR, either through a detailed
25 regulation of each of its subsidiaries so that each and every intercompany
26 transaction related to the ICFA, between GWR and its subsidiary utility
company is reviewed in detail; including the financing associated with

1 constructions of such infrastructure, which is dependent on the balance
2 sheets of GWR and that the traditional regulatory process relating to utility
3 oversight is fully followed either by direct jurisdiction over GWR or
4 through an intense review of all the transactions that GWR is involved in
which, in essence, are providing utility services. (Transcript Vol. II at 233
[O'Reilly Testimony]).

- 5 • Require GWR to segregate all funds received under ICFAs, including past
6 payments (and payments due or paid by December 31, 2012). (SNR-1 at
7 14). The prior payments and all payments made hereafter must be
8 protected and segregated for use pursuant to the provisions of the
9 applicable ICFA as provided by Section 6.4.1 of the Settlement
Agreement, including funds paid under the ICFA but earmarked to secure
GWR's indebtedness to Regions Bank as described herein. (A-17 at 9).
- 10 • Require that there be a tie between the HUF that is proposed in the
11 settlement and the obligations under the ICFAs including tying future
12 increases in HUFs to the CPI adjuster. In addition, SNR and New World
13 Properties, Inc. ("NWP") should not have to pay a CPI adjuster on the
14 funds that they are paying towards getting utility service (and treated as
contributions in aid of construction) to Water Utility of Greater Tonopah
("WUGT") and Hassayampa Utility Company ("HUC"), when other
similarly situated developers will not have to pay similar escalators on
their hookup fees in the future.
- 15 • Notwithstanding the language of Section 6.4.4 of the Settlement
16 Agreement which provides for a 70%-30% split of future payments to
17 GWR under the ICFAs, require that the Commission Final Order
18 ("Order") make clear that NWP, SNR and all other parties to ICFAs may
19 fully fund applicable HUFs due to the utilities that will provide service to
the property covered by the ICFAs.
- 20 • Require GWR to amend its ICFA to make clear that monies allocated to
WUGT and HUC as HUFs may be paid directly to WUGT and HUC.
- 21 • Require GWR and its non-regulated affiliates to agree to submit to the
22 jurisdiction of the Commission regarding enforcement of the terms of the
23 Settlement Agreement and the Order approving the Settlement Agreement,
24 and waive the right to assert that the Commission lacks jurisdiction over
GWR and its non-regulated affiliates.
- 25 • Require GWR to provide annual reports certified by an officer of GWR and
26 its regulated subsidiaries allowing for verification of compliance with all
obligations imposed under the Settlement Agreement. Given the complexity

1 of GWR's corporate structure, such certification should also include
2 Global Water Resources Corp. ("Global Water"), parent of GWR.

- 3 • Require that all monitoring of the terms and conditions of compliance to
4 the Settlement Agreement by GWR and its affiliates be specifically
5 spelled out in the Order as to avoid any ambiguity as to how Staff and
6 RUCO would monitor such compliance.
- 7 • Require that any Code of Conduct developed and approved by Staff and
8 RUCO also apply to Global Water, as well as all other GWR affiliates.
- 9 • Require both GWR and the regulated utilities to guarantee that the monies
paid under the ICFA are used to construct infrastructure contracted for
even if the parent goes bankrupt. (SNR-1 at 16).

10 There is no dispute that Staff's proposal (adopted by the signatory parties under the
11 Settlement Agreement) establishing HUFs in this case and linking such HUFs to prospective
12 payments due and payable under the ICFA goes a long way to alleviate some of the concerns of
13 SNR. (SNR-1 at 5). However, it has always been SNR and NWP's position that the Commission
14 needs to go further to ensure that the millions of dollars investments made by developers under
15 these ICFAs are committed to construct the contracted-for regional infrastructure committed by
16 GWR to serve Arizona ratepayers and to ensure that GWR and the regulated utilities serving these
17 ratepayers have the funds available to construct the infrastructure, contracted for and guaranteed
18 by GWR. (*Id.*).

19 II. Reply to Staff Closing Brief

20 A. Commission Has Jurisdiction over ICFA'S and GWR.

21 Staff's assertions that "it is important to remember that the ICFA's are voluntary
22 agreements" (Staff's Initial Closing Brief at 21) and "SNR and NWP entered into the ICFA's of
23 their own free will . . ." (Staff's Initial Closing Brief at 26) ignores the evidence at hearing that
24 showed that the only realistic option for SNR and NWP to obtain utility services was to enter into
25 an ICFA and as a result, had no other choice. In addition, Staff's contention that the Commission
26

1 cannot change or modify a contract that was voluntarily entered into between two private parties
2 or that the Commission does not have the authority to prescribe the content of the contract is
3 misplaced given the facts of this case.¹ (Staff's Initial Brief at 26).

4 The record supports the following:

- 5 • At the time the ICFA was entered into with GWR, Maricopa County
6 mandated Regional Infrastructure to support zoning. (SNR-1 at 7).
- 7 • SNR and New World Properties, Inc. ("NWP") were specifically told by
8 Maricopa County Planning and Zoning authorities that developers needed
9 to provide a regional and consolidated approach to water and wastewater
10 utilities to their properties or such developments would not be approved.
11 (Transcript Vol. II at 295 [Jellies Testimony]).
- 12 • In order to proceed with entitlements, Maricopa County demanded a
13 regional solution and mandated that SNR have a water provider and an
14 approved 208 Permit. (SNR-1 at 7).
- 15 • The only option presented to SNR (and NWP) was either to become a
16 utility themselves or sign an ICFA with GWR. (*Id.*).
- 17 • GWR represented SNR that the ICFA was part of a regional water and
18 wastewater infrastructure development plan supported by the Arizona
19 Corporation Commission ("Commission"). (*Id.*).
- 20 • Neither SNR nor NWP was ever offered a conventional Main Extension
21 Agreement or Master Utility Agreement by GWR to provide utility
22 services to their properties. (Transcript Vol. II at 314 [Jellies
23 Testimony]).
- 24 • GWR directed SNR and NWP that they must enter into an ICFA because
25 of the financing need for GWR to acquire Western Maricopa Combine
26 Inc., ("WMC") an Arizona corporation and the holding company for five
regulated water utilities including WUGT and Hassayampa Utility
Company ("HUC"). (Transcript Vol. II at 314 [Jellies Testimony]).

21 As described below, the Settlement Agreement and creation of a HUF, results in inequity
22 and discrimination between developers with ICFAs on the one hand and developers without
23 ICFAs, as well as impacts specific provisions of the ICFAs themselves. These very impacts alone
24 create Commission jurisdiction over the ICFAs.

25 ¹ Staff cites *General Cable Corp. v. Citizens Utilities Co.*, 27 Ariz.App. 381, 555 P.2d 350 (1976) and
26 *Application of Trico Electric. Co-op.*, 92 Ariz. 373, 387, 377 P.2d 309 (1962).

1 In addition, the record clearly supports the proposition that the Commission has
2 jurisdiction over the ICFA's as illustrated by the following exchange between counsel for NWP
3 and Global witness Walker:

4 Q. Okay. If you could turn to the next page, line 16 and 17, Mr. Armstrong says:
5 Global Parent has never contended that ICFAs are nonjurisdictional to the ACC.
6 Do you believe the Commission has jurisdiction over the ICFAs?

7 A. I think the Commission has jurisdiction over the Global Utilities and I think it has
8 sort of an implied jurisdiction over Global Parent. And we have always said that
9 we are not going to argue that the ICFAs are nonjurisdictional because we
10 understand there is significant concern and interest in them from the Commission.
11 So we weren't going to dispute whether they had legal jurisdiction or not.

(Hearing Transcript Vol. IV at pp. 574-575 (emphasis added)).

12 Because GWR was a critical part of this case, Staff recommended that it become a party to
13 this proceeding so that the Commission could place requirements on them. (SNR-1 at 12). By
14 GWR intervening in this rate case, GWR has consented to Commission jurisdiction. (*Id.*). In
15 addition, "Global has never contended that ICFAs are non-jurisdictional." (SNR-1 at 13). As a
16 result, both GWR and the ICFA's fall under Commission jurisdiction and if in the public interest,
17 the Commission has the authority to modify the ICFA. At a minimum, the Commission has the
18 authority, as a condition of approving the Settlement Agreement, to require GWR to modify the
19 ICFA to conform to the provisions agreed to in the Settlement Agreement as well as to avoid
20 potential conflict with the terms of the IFCA itself as argued by SNR in this case.

21 **B. Case Law Does Not Prohibit Commission From Modifying ICFA.**

22 Staff argues that the Commission cannot change or modify a contract that was voluntarily
23 entered into between two private parties. (See Staff's Initial Brief at 26, *citing*, *General Cable*
24 *Corp. v. Citizens Utilities Co.*, 27 Ariz.App. 381, 555 P.2d 350 (1976)). Staff's reliance on the
25 *General Cable Corp.* case is misplaced. First, SNR and NWP have asserted throughout this
26 proceeding that if they wanted utility service, they had no choice but to enter into the ICFA (*See*,

1 Section II.C. below). SNR and NWP assert that the record will support their contention that these
2 ICFA's were not entered into voluntarily. Next, the *General Cable Corp.* Court determined that
3 the charges under contract at issue in that case "including the minimum charges," were not, "as a
4 matter of law, unjust, unreasonable or discriminatory." *General Cable Corp.*, 27 Ariz.App. at 384,
5 555 P.2d at 353. SNR and NWP assert that ICFA and Settlement Agreement create a competitive
6 disadvantage for SNR and NWP. (See Section II D below) and the resulting charges to both SNR
7 and NWP are "unreasonable," "unjust and "discriminatory." (See, Section III.D. below). Even if
8 the Commission were to determine that they did not have the authority to modify the ICFA, they
9 do have the authority, as a condition of approving the Settlement Agreement, to require GWR to
10 modify the ICFA to address SNR's and NWP's concerns. (See, Section II.A. above).

11 Next, Staff argues that under the "Commissions constitutional power to prescribe the
12 forms of contracts to be used by public service corporations under Ariz. Const. Art. 15 section 3,"
13 "the Commission can determine the outline and designate the arrangement of topics to be
14 incorporated therein but does not have the authority to prescribe the content that are the specific
15 contractual provisions to be agreed upon" (See Staff's Initial Brief at 26, citing, *Application of*
16 *Trico Electric. Co-op.*, 92 Ariz. 373, 387, 377 P.2d 309 (1962)). As in the *General Cable Corp.*
17 case, the Court was not dealing with a contract that was not voluntarily entered into or produced
18 rates and charges that were "unreasonable," "unjust and "discriminatory." By GWR intervening
19 in this rate case, GWR has consented to Commission jurisdiction. (SNR-1 at 12). In addition,
20 "Global has never contended that ICFAs are non-jurisdictional." (SNR-1 at 13). In any event,
21 even if the Commission is not inclined to modify the ICFA, they do have the authority, as a
22 condition of approving the Settlement Agreement, to require GWR to modify the ICFA to address
23 SNR's and NWP's concerns. (See, Section II.A. above).

1 **C. SNR And NWP Had No Other Viable Option Other Than ICFA To**
2 **Obtain Utility Service.**

3 In addition, the Staff challenge to SNR and NWP's assertion that that they had no choice
4 but to enter into the ICFA by citing GWR's argument that SNR and NWP: (1) could have worked
5 with the prior owners of WMC; (2) worked with Balterra Sewer Corp; or (3) could have formed
6 their own utility, also ignores the uncontroverted record which includes:

- 7 • Although SNR and NWP did meet with the prior owners of WMC, WMC
8 did not meet and push towards consolidation and regionalized
9 infrastructure that the Commission and the County was looking for; WMC
10 did not have any desire to do regional planning; the WMC service territory
11 did not incorporate all of the lands owned by SNR and NWP and a
12 piecemeal approach to utility service would have been necessary.
13 (Transcript Vol. II at 295 [Jellies Testimony]).
- 14 • Because SNR's and NWP's properties are bifurcated by Interstate 10,
15 using Balterra as a wastewater provider would have resulted in a situation
16 where SNR and NWP had one wastewater provider servicing the north
17 properties and one wastewater provider servicing the south properties;
18 neither SNR nor NWP believed that Balterra met the regionalization
19 standard that was required to be pursued by the County; and at the time
20 SNR and NWP was considering this option, Balterra's CC&N application
21 and 208 permit application were pending (GWR filed a competing 208
22 application which SNR and NWP supported due to the regional nature of
23 GWR). (Transcript Vol. II at 296-297 [Jellies Testimony]).
- 24 • Although forming their own utility company was also considered, SNR
25 and NWP were told unequivocally by the Commission that they were not
26 necessarily looking to have small water companies formed. (Transcript
27 Vol. II at 297 [Jellies Testimony]). The Commission was looking to
28 consolidate water companies. (*Id.*). Given WMC had portions of SNR's
29 and NWP's properties within its CC&N, this option was not seriously
30 pursued. (*Id.*).

31 The only purpose of the ICFA was to facilitate and arrange the provision of a regional
32 solution for water, wastewater and reclaimed water services or to provide "Utility Services" to
33 developers. (SNR-1 at 5). ICFA's were structured to take responsibility for water planning away
34 from developers/homebuilders; (S-2 at 4). There is a blurred line between GWR and the
35 regulated GWR utilities under the provisions/obligations associated with these ICFA agreements.
36

1 GWR caused this blurring by including deliverables traditionally provided by regulated utilities in
2 the list of obligations GWR undertook under the ICFA as Coordinator. (S-2 at 17). Many of the
3 ICFA agreement-related activities assumed by the GWR as the Coordinator would traditionally be
4 the responsibility of the underlying regulated utility. (S-2 at 18). Since GWR has agreed to
5 assume these responsibilities, the regulated utilities (and their ratepayers) have a vested interest in
6 GWR completing or meeting these responsibilities in a safe, reliable, financially responsible, and
7 timely manner. (Id.). GWR acted at all times as the regulated utility with the monopoly by
8 demanding payments under the ICFAs for the provision of utility services. (SNR-1 at 15).
9 Oversight of such responsibilities to provide such utility service falls directly on the Commission.
10 At a minimum, the Commission has the authority, as a condition of approving the Settlement
11 Agreement, to require GWR to modify the ICFA to address SNR's and NWP's concerns.

12 **D. ICFA And Settlement Agreement Create Competitive Disadvantage For**
13 **SNR And NWP**

14 Next, Staff's assertion that "the terms of the Agreement mitigate any perceived disparity
15 by allowing seventy percent of the ICFA fee to satisfy the HUFs" ignores the fact that by
16 establishing a HUF, the Settlement Agreement inadvertently creates another class of developer
17 (Transcript Vol. II at 288 [Jellies Testimony]) that has not entered into an ICFA, that would
18 clearly have a cost advantage. (SNR-1 at 15). This is compounded by the added CPI adjuster
19 that is currently calculated at \$1.7 million for NWP and \$4 million for SNR. (Transcript Vol. I at
20 127 [Fleming Testimony]).

21 In addition, as set forth in SNR's Initial Closing Brief, the ICFAS provides for a
22 renegotiation of the CPI Factor in the event that it "results in a Landowner Payment in excess of
23 related financing requirements." (SNR-1, Exhibit 2 at 15). By designating \$3,500 of the
24 Landowner Payment as a HUF under the Settlement Agreement, this amount is no longer
25 includable as part of the "financing requirements" under the ICFA and an Order of the
26 Commission modifying the CPI adjuster under the ICFA as it applies to the re-characterized

1 HUFs would be consistent with the language of the ICFA itself and fall under the Commission's
2 authority.

3 Finally, because the ICFA contains a "Most Favored Nation" clause (SNR-1, Exhibit 2 at
4 33), the adoption of the Settlement Agreement without a corresponding amendment to the CPI
5 adjuster will effectively eviscerate the "Most Favored Nation" clause of the ICFA and an Order of
6 the Commission modifying the CPI adjuster would be fully consistent with the spirit of that
7 provision of the ICFA.

8 In addition, the CPI adjuster funds received by GWR may very well be used to fund utility
9 infrastructure and could therefore end up in rate base. This concern was confirmed by Utilities
10 Director Olea during questioning by NWP counsel as follows:

11 Q. *So one of the questions I asked Mr. Walker was that CPI could be a very big*
12 *number. I mean if we just do basic, simple math, if you assume for New World*
13 *Properties it has gone up \$450 per EDU in the last five years, you multiply that*
14 *by 200,000, that's \$90 million. So if you think about the CPI adjuster as it relates*
15 *to this, applying to what is considered hookup fee and what is not considered*
hookup fee, but it goes for Global Parent, could that CPI factor also be used to
fund plant that then goes into rate base?

16 A. *It could, yes.*

17 As a result, the Commission certainly would have an interest in the regulatory treatment of
18 such funds. At a minimum, the Commission has the authority, as a condition of approving the
19 Settlement Agreement, to require GWR to modify the ICFA to address SNR's and NWP's
20 concerns.

21 **E. SNR Supports Establishing Code of Conduct.**

22 Staff asserts that "one of the more important provisions of the Agreement is that Global
23 Water and Wastewater Utilities will work with Staff to adopt a Code of Conduct to apply to
24 transactions that are between or involve the Global Applicants and any unregulated affiliates"
25
26

1 (Staff Initial Brief at 20). SNR supports this as long as such Code of Conduct also applies to
2 parent Global Water as well.

3 **III. GWR's Closing Brief**

4 **A. SNR and NWP Are Uniquely Situated to Oppose the Settlement** 5 **Agreement.**

6 SNR does not dispute GWR's contention that 17 parties to the case supported the
7 Settlement Agreement. (GWR's Post Hearing Brief at 1). Yet it is important to note that **none** of
8 the 17 parties that support the Settlement Agreement have entered into an ICFA with GWR.
9 (Emphasis added). In addition, although SNR and NWP represent only two of the 172 ICFA's
10 (GWR's Post Hearing Brief at 10), only the ICFAs entered into by SNR and NWP require \$1,000
11 per EDU payment before a start work notice was issued. (Transcript Vol. I at 109 [Fleming
12 Testimony]). In fact, SNR has already paid approximately \$6 million dollars to GWR with
13 additional monies to be paid at the resolution of the bankruptcy proceedings (SNR-1 at 13) and
14 NWP has already paid \$3,750,000, under its ICFA. (NWP-4 at p. 4, lines 4-5). Yet despite
15 significant monies already paid to GWR, there have been no homes constructed by SNR or NWP
16 and no utility infrastructure is in place to serve such homes. (Transcript Vol. I at 96 [Fleming
17 Testimony]). In addition, although GWR argues that "notice of the settlement was sent to all 172
18 ICFA parties" (Global's Post Hearing Brief at 21), such notice was not provided to those
19 developers until August 27, 2013 (See A-34). This was several months after the intervention
20 deadline in the case past and after the settlement was reach. There is no evidence in the record as
21 to when, if ever, these developers were provided notice that the Commission would be instituting
22 a HUF in this case and the potential impact that would have on their ICFAS. That is why it is
23 imperative that this Commission step in now and assure developers that monies provided to GWR
24 for infrastructure will be protected. (SNR-1 at 13-14).
25
26

1 **B. GWR Never Properly Justified Using ICFA's Funds for Acquisitions.**

2 Next, GWR argues that it was justified to use ICFA's to fund acquisitions of troubled
3 utilities and to deal with rapid growth in areas with long term water scarcity issues . . . (GWR's
4 Post Hearing Brief at 11). Yet, GWR very satisfactorily justified the significant acquisition
5 premiums paid for such acquisitions as follows:²

<u>Utility System Acquired</u>	<u>Purchase Price</u>	<u>Book Value</u>	<u>Acquisition Premium</u>
Palo Verde Utilities Co. Santa Cruz Water Co.	\$33,762,427	\$19,453,890	\$14,308,537
Cave Creek Water Co. Pacer Equities, Inc.	\$7,025,924	\$3,554,438	\$3,471,486
Sonoran Utility Services	\$18,550,000	\$1,085,451	\$17,464,549
West Maricopa Combine	\$54,369,889	\$12,771,724	\$41,598,165
CP Water Co	\$1,250,000	\$0	\$1,250,000
Balterra Sewer Corp.	\$1,310,010	\$0	\$1,310,010
Total	\$116,268,250	\$36,865,503	\$79,402,747

16 According to GWR President and Chief Operating Officer, "*But at the end of the day, as*
17 *is all acquisitions, it was a negotiation and the price was driven by two parties negotiating to*
18 *reach a deal.* (Transcript Vol. I at 74 [Fleming Testimony]. Throughout this proceeding, SNR
19 and NWP have raised concerns that based upon the financial condition of GWR, amounts
20 previously paid to GWR as well as amounts subsequently due or paid to GWR under these
21 ICFA's, will not be utilized to construct regional utility infrastructure for future SNR
22 Developments and other planned projects. (SNR-1 at 4-5). The above financial irresponsibility is
23 just another reason for SNR and NWP's concerns. Without Commission oversight, SNR has no
24 protection for its investment if GWR is unable to perform or goes bankrupt. (SNR-1 at 10).

25
26 ² (See, A-25).

1 **C. SNR And NWP Had No Other Viable Option Other Than ICFA To Obtain**
2 **Utility Service.**

3 SNR takes issue with GWR's statement "the ICFA's were not take it or leave it deals."
4 (GWR's Post Hearing Brief at 20). As explained above, GWR was the only entity offering a
5 regional solution and the ICFA was the only mechanism available or offered by GWR to obtain
6 such services. In addition, SNR takes issue with GWR's statement that SNR and NWP "have not
7 been able to identify any actual competitors that would be advantaged." (GWR's Post Hearing
8 Brief at 20). Mr. Jellies addressed this issue with his counsel as follows:

9 *Q. Again in Mr. Fleming's testimony, in response to a question about Sierra*
10 *Negra Ranch's and New World Properties' claims that they will be at a*
11 *competitive disadvantage compared to developers who only have to pay a hookup*
12 *fee, Mr. Fleming states at page 6 of his rebuttal testimony as follows:*

13 *"For one thing, I have no idea what developers they could be*
14 *talking about. The other large master planned developments in the*
15 *greater Tonopah service area are also parties to ICFAs. The only*
16 *other master development in the area is Balterra, who did not sign*
17 *an ICFA and the developer was foreclosed."*

18 *A. Okay. That's, that is actually inaccurate. Okay? Going back to when we were*
19 *going through this process, there was at least a dozen projects that were*
20 *contemplated and processing through Maricopa County at the time. The fact that*
21 *they didn't go forward doesn't mean they are not going to be competitors in the*
22 *future. It doesn't mean they are not going to now be able to utilize HUFs as*
23 *opposed to ICFAs, which are, you know, going to be, through mutual agreement,*
24 *you know, no longer available for someone to use out here.*

25 (Transcript Vol. II at 305-306). More specifically, Mr. Jellies testified:

26 *Q. Mr. Jellies, are you a landowner in the area?*

A. Yeah, as a matter of fact, I am part of a partnership that physically owns 80
 acres right down the street from Balterra at 411th and Camelback. And I actually
 represent as a consultant other property owners who have filed in the past and
 then let go dormant development master plans on over 1400 acres. And I have
 had conversations with other property owners on thousands of acres in this valley
 on their development plans.

1 *Q. And these owners and this property that you are describing that are in the*
2 *same area as the property owned by New World Properties, this property is not*
3 *covered by ICFAs?*

4 *A. No, they are not covered by ICFAs.*

5 (Transcript Vol. II at 305-306).

6 **D. Inflationary Risks do not Justify CPI Adjuster.**

7 SNR disputes GWR's contention that "*the CPI provision serves to protect GWR from this*
8 *inflation risk.*" (GWR's Post Hearing Brief at 21). According to Global witness Ron Fleming, the
9 CPI adjuster is included in ICFAs "to cover the future ... inflationary effects of changes in costs."
10 (Transcript Vol. I at 94 [Fleming Testimony]). However, the very same argument would also
11 apply to HUFs, which similarly place a utility at risk of "inflationary effects of changes in costs."
12 Global witness Paul Walker acknowledged as much—and implicitly, the obvious inequity of
13 applying a CPI adjuster to Landowner Fees re-characterized as HUFs under the Settlement
14 Agreement—in the following exchange with Judge Nodes:

15 *Q. I guess the question is why, if you have now agreed to a particular level of*
16 *HUF fees and you don't know when those are ever going to be collected*
17 *either, I mean it might be 20 years before you have somebody, and maybe*
18 *that's an exaggeration, but some number of years, but why shouldn't that*
19 *be the baseline for everyone that then, if, you know, in a subsequent case*
20 *that HUF is increased, why should the CPI not be somehow tied to*
21 *whatever level of increase there is in a HUF from this point in time to*
22 *effectively replace or mimic the CPI adjuster so that developers are left*
23 *basically on an equal footing?*

24 *A. I think I understand exactly your point. And I completely expect that in*
25 *the next rate case Staff and RUCO are going to want to do exactly that to*
26 *our hookup fee.*

27 *Q. Exactly what? To increase it?*

28 *A. Adjust, increase it. And I think, if I was Staff or RUCO, the first thing I*
29 *would do is say what has the CPI been. So I don't want to get into*
30 *litigating the next case.*

1 (Transcript Vol. IV at 646-647). This testimony identifies the inequity and discrimination that
2 will exist between developers with ICFAs on the one hand and developers without ICFAs on the
3 other if the Commission fails to order a modification of the CPI adjuster in the ICFAs as a
4 condition of approving the Settlement Agreement.

5 **E. SNR Believes Additional Affiliate Regulation Is Justified.**

6 SNR, (as well as NWP) throughout hearing and briefing, has set forth overwhelming
7 evidence that GWR, by entering into ICFAs instead of the more traditional financing
8 mechanisms with regulated entities regulated by this Commission, has sought to avoid oversight
9 and regulation by this Commission, even though it had been acting in most respects as a public
10 service corporation. (SNR-1 at 10). GWR was using the ICFAs to circumvent and evade the
11 Commission's oversight and jurisdiction by collecting fees in exchange for "facilitating" utility
12 services by GWR owned and controlled regulated subsidiaries in direct violation of Commission
13 orders and in violation of Article 15, Section 3 of the Arizona Constitution and A.R.S. section
14 40-202. (Id.). GWR argues that between the affiliated interest rules, and Code of Conduct, there
15 is no reason for the Commission to do anything further. (GWR's Post Hearing Brief at 22).
16 What SNR is seeking in this case was summed up by Mr. John O'Reilly at hearing as follows:

17 *What we have asked for, I think, is generally the same thing that hopefully at one*
18 *point in time the Commission would undertake given the significance of the*
19 *financial stability of all these utilities to the people in the Phoenix area. . . if the*
20 *conclusion is that they are acting as a utility and should be regulated as a utility,*
21 *then regulate them as a utility; if not, regulate their transactions and their day-to-*
22 *day operations with the utility through the utility so that there is not the ability to*
23 *upstream money and to transfer them without regulatory control, as has happened*
24 *in the past, yes, in terms of jurisdiction, yes, in terms of regulatory oversight and*
25 *control; and, three, to address the issue that's now created if the settlement*
26 *agreement with HUFs is adopted as to what happens to all of these ICFAs out*
there, again 172, 180. You know, I heard different numbers. I think the schedule
that's attached indicates 172. But there is 172 contracts that are out there that are
in a state of perhaps confusion, a state of issue with the settlement agreement, a
HUF. And our hope is that, to avoid 172 issues going forward or any of those
issues being going forward, that the Commission will take a look at, take
jurisdiction over the utilities that are provided through these contracts so that

there is a complete regulatory control as opposed to piecemeal regulatory control.

Transcript Vol. II at 245-245 [O'Reilly Testimony].

IV. MISCELLANEOUS

A. The Commission Should Require GWR to Segregate All Funds Received Under the ICFAs.

As requested above, the Commission should require GWR to segregate all funds received under ICFA's, including past payments (and payments due or paid by December 31, 2012). (SNR-1 at 14). The prior payments and all payments made hereafter must be protected and segregated for use pursuant to the provisions of the applicable ICFA as provided by Section 6.4.1 of the Settlement Agreement. (A-17 at 9). 6.4.1 provides as follows:

ICFA fees received after December 31, 2013, will be handled as follows: a portion of funds received by Global Parent will be paid to the associated utility as a hook-up fee ("HUF") to be established in accordance with this Agreement, and the remaining portion of the funds will be available to Global Parent for use pursuant to the provisions of the applicable ICFA. (Emphasis added).

(*Id.*). Pursuant to the applicable provisions of the ICFA, \$500 per EDU or \$4,311,000 was to be used by GWR to acquire WMC and all its subsidiaries, which it did. (SNR-1, Exhibit 2 at 6). Thereafter, the bulk of the funds (90%) collected under the ICFA were to be utilized to ensure that WUGT or HUC provide all engineering, design, construction, licensing, permitting, payment and financing for all Utility Services as specifically contracted for under the ICFA. (SNR-1, Exhibit 2 at 3). As set forth at hearing, SNR has paid GWR approximately \$6 million dollars. (SNR-1 at 9).

Thereafter, SNR was forced into bankruptcy as GWR was/is forcing a land sale for immediate payment. (*Id.*). GWR has been unwilling to allow for a payment plan to satisfy an arbitration judgment. SNR always intended to pay the amount determined due by the Bankruptcy Court and had filed a plan for the Bankruptcy approval. (*Id.*). Pursuant to stipulation that was

1 approved by the Bankruptcy judge in open court, SNR agreed to pay GWR \$5,321,000, of which
2 \$1,000,000 is to be paid on or before December 31, 2013 and the balance on or before March 21,
3 2014. A formal Order from the Bankruptcy Court is forthcoming.

4 Although Section 6.4.1 provides that "*the remaining portion of the funds will be available*
5 *to Global Parent for use pursuant to the provisions of the applicable ICFA,*" GWR has shown
6 such funds will not be used pursuant to the ICFA. For example, a review of financial statements
7 reveals that GWR has pledge that monies due from SNR would be used to secure indebtedness
8 Regions Bank that resulted in a potential default or a default from their loan covenants.
9 (Transcript Vol. II at 233 [O'Reilly Testimony]). As such, SNR seeks such relief from the
10 Commission to ensure that these monies paid under the ICFAs, including such monies now
11 pledged to Regions Bank, which includes the \$5,321,000 referenced above, are in fact sequestered
12 and used for utility infrastructure as contemplated. (Transcript Vol. II at 234 [O'Reilly
13 Testimony]).

14 V. CONCLUSION

15 In summary, SNR requests that the Commission, as a condition for approving the
16 Settlement Agreement:

- 17 • Regulate the transactions of GWR, either through a detailed regulation of
18 each of its subsidiaries or through an intense review of all the transactions
19 that GWR is involved in which, in essence, are providing utility services.
- 20 • Require GWR to segregate all funds received under ICFAs, including past
21 payments (and payments due or paid by December 31, 2012).
- 22 • Require that there be a tie between the HUF and the obligations under the
23 ICFAs so that SNR and NWP do not have to pay a CPI adjuster on the
24 funds that they are paying towards getting utility service when other
25 similarly situated developers will not have to pay similar escalators on
26 their hookup fees in the future.
- Require that the Order make clear that NWP, SNR and all other parties to
ICFAs may fully fund applicable HUFs.

- Require GWR to amend its ICFA to make clear that monies allocated to WUGT and HUC as HUFs may be paid directly to WUGT and HUC.
- Require GWR and its non-regulated affiliates to agree to submit to the jurisdiction of the Commission regarding enforcement of the terms of the Settlement Agreement and waive the right to assert that the Commission lacks jurisdiction over GWR and its non-regulated affiliates.
- Require GWR to provide annual reports certified by an officer of GWR and its regulated subsidiaries (including Global Water) allowing for verification of compliance with all obligations imposed under the Settlement Agreement.
- Require that all monitoring of the terms and conditions of compliance to the Settlement Agreement by GWR and its affiliates be specifically spelled out in the Order.
- Require that any Code of Conduct developed and approved by Staff and RUCO also apply to Global Water, as well as all other GWR affiliates.
- Require both GWR and the regulated utilities to guarantee that the monies paid under the ICFA are used to construct infrastructure contracted for even if the parent goes bankrupt.

RESPECTFULLY SUBMITTED this 31st day of October, 2013.

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